THE HON'BLE SRI JUSTICE A. GOPAL REDDY
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.20407 OF 2007

Date: 3.12.2007

Between:

G. Govind Raju … Petitioner

And

The Collector and District Magistrate,
Chittoor District and others. … Respondents.

ORAL ORDER: **(per A. Gopal Reddy, J)**

In this Writ Petition, the petitioner Sri G. Govind Raju, father of the alleged detenu – G. Chinna Raja @ Chinna Raju, has challenged the order issued by the Government in G.O.Rt.No.4413 General Administration (Law and order II) Department dated 1.8.2007 confirming the order of detention passed against his son by the Collector and District Magistrate, Chittoor District dated 18.6.2007 under Section 3(1)(2) read with Section 2(a) (b) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act, 1986').

Prior to his detention, the alleged detenu was arrested in the following cases booked by the

Prohibition and Excise Officials, Palamaner, Chittoor District.

1. Cr.No.9/06-07 dated 27.4.2006 of Prohibition and Excise Inspector, Palamaner, wherein the alleged detenu was found to have been in possession of 100 arrack sachets of illicit liquor each packet containing about 100 ml. Arrack.
2. Cr.No.90/06-07 dated 7.10.2006 of Prohibition and Excise Inspector, Palamaner involving 400 sachets of illicit arrack, each sachet containing 100 ml illicit liquor.
3. Cr.No.91/06-07 dated 7.10.2006 of Palamaner Prohibition and Excise Station wherein the detenu was alleged to have been in possession of 10 urea bags of illicit liquor, each bag containing 300 arrack sachets totaling to 7500 sachets, each sachet containing 100 ml illicit liquor.
4. Cr.No.169/06-07 dated 26.1.2007 of Palamaner Prohibition and Excise Station wherein the alleged detenu was alleged to have been found in possession of two gunny bags of illicit liquor, each bag containing 1000 sachets of arrack totaling to 2,000 sachets, each sachet containing 100 ml illicit liquor.

In all the above cases, the alleged detenu was found to be in possession and transporting illicit liquor containing poisonous substances, which are injurious to health and unfit for human consumption, in contravention of the provisions of the A.P. Excise Act, 1968. In Cr.No.90/06-07, it is alleged that the alleged detenu along with another accused was transporting the sachets of arrack on a Bajaj Discover Motor Cycle and when the Prohibition and Excise officials tried to detain the dtenu and the co-accused, they ran away leaving the vehicle including the contraband at the scene of offence. In Crl.No.169/06-07 the detenu along with another was found to be transporting illicit liquor on Bajaj Scooter in two gunny bags. In Crl.No.91/07-07 the alleged detenu along with another was found to be transporting ten urea bags containing sachets of illicit liquor in an Ambassador car. It is alleged that the co-accused on examination by the excise officials stated that at the instance of the alleged detenu the illicit liquor sachets were being transported from Karnataka State to Andhra Pradesh to be supplied in Palamaner and surrounding areas by the detenu. In all the cases contraband was seized and samples were drawn and sent for chemical examination to the Government Chemical Examiner, Prohibition and Excise, Chittoor. As per the chemical analysis reports, it was found that all the samples drawn from the seized contraband was found to be “diluted arrack, containing sediment, unfit for human consumption and injurious to health” and the same will drastically affect the central nervous system causing more intoxication resulting in deterioration of health of consumers.

In Crime No.9/2007 and Crime No.169 of 2006-07 the alleged detenu was arrested and produced before the court and subsequently enlarged on bail. As regards Crime Nos.90/2006-07 and 91/2006-07 are concerned, the alleged detenu along with other accused were surrendered before the Judicial Magistrate of First Class who remanded him to judicial custody and subsequently they were enlarged on bail.

As the alleged detenu was continuously involving in the bootlegging activities i.e. possession, transportation and sale of illicit liquor for money gain in Palamner town and surrounding mandals, which is unfit for human consumption, and, as it will adversely affect the pubic health, particularly, the downtrodden and under privileged living in the said areas, the Collector and District Magistrate, Chittoor, in exercise of the power vested in him under sub-sections (1) and (2) of Section 3 read with Section 2(a) and (b) of the Act, 1986, ordered for his detention until further orders in the Central Prison,

Cherlapalli, Rangareddy District by the impugned order in Roc.C2/7612/2007 dated 18.6.2007 from the date of service. The Government in their order in G.O.Rt.No.3611 G.A. (Law and Order II) Department dated 25.6.2007, in exercise of the power under sub-section (3) of Section 3 of the Act, 1986, accorded approval to the order of detention passed by the Collector. Thereafter, the Government referred the matter to the Advisory Board constituted under Section 9 of the Act, which, after hearing the detenu, the investigating officers and after perusing the connected records made available to it, opined that there is sufficient cause for the detention of the detenu Sri Chinna Raja @ Chinna Raju. The Government after taking into consideration the report of the Advisory Board and the material available on record, in exercise of the powers conferred under sub-section (1) of Section 12 read with section 13 of the Act, 1986, through G.O.Rt.No.4413 G.A. (Law and Order II) Department dated 1.8.2007 confirmed the order of detention and directed that the detention of the alleged detenu be continued for a maximum period of 12 months from the date of his detention i.e. 20.6.2007. Hence, this writ of habeas corpus.

Learned counsel for the petitioner contended that the alleged detenu was not involved in manufacturing of liquor, but he was only found to be carrying arrack sachets and in possession of illicitly distilled liquor. The report of the chemical examiner does not show that the seized contraband contains any harmful substance and the impurities said to have been contained in the liquor are dangerous to public health. Hence the detention order passed on the ground that the detenu is a bootlegger without any allegation that he is manufacturing the liquor, cannot be sustainable. If the detenu is released on bail, it is always open for the authorities to seek cancellation of bail, but without resorting to the same he cannot be detained. Since he is not a bootlegger, he cannot be detained by invoking the provisions of the Act.

Learned counsel for the petitioner further contended that the activities of the alleged detenu do not come within the ambit of 'bootlegger' as defined under section 2(b) of the Act, 1986 and acting in any manner prejudicial to the maintenance of public order and as such the order of detention cannot be sustained and placed reliance on the decision of the Supreme Court in **RASHIDMIYA v. POLICE COMMISSIONER, AHMEDABAD**[1].

The learned counsel also relied on a judgment reported in **C. Venkateswara Rao v. Collector and District Magistrate, Krishna District, Machilipatnam**[2] wherein this Court held that mere mentioning that it is injurious to health would not meet the requirement of law resorting to preventive detention and the possession of small quantity of liquor would not create a ground for feeling of insecurity among the general public or any section thereof or grave or widespread danger to life or public health.

The learned counsel for the petitioner would further contend that the petitioner was enlarged on bail in all the cases by the jurisdictional Magistrate and the Collector before passing the order of detention has not taken into consideration the said aspect and, therefore, there was non-application of mind by the detaining authority while passing the order of detention and placed reliance on the decision of the Division Bench of this Court in **K. RAMAMOHAN REDDY v. CHIEF SECETARY TO GOVT., GOVT OF A.P.**[3]

On the other hand, learned Advocate General contends that the detenu is an habitual bootlegger of transporting and distributing illicitly distilled liquor and the Collector after taking into consideration the analyst reports in all the cases that the arrack is unfit for human consumption, in

exercise of the power under section 3 of the Act has rightly ordered for his detention, as the activity of the detenu in transporting of the illicit liquor will adversely affect the health of the downtrodden and underprivileged living in the area and as such no interference is warranted by this Court.

In the light of the above submissions and pleadings as referred to above, the point that arises for consideration is whether the detention order passed by the Detaining Authority as approved by the Government in G.O.Rt.No.3611 dated 25.06.2007 and confirmed in G.O.Rt.No.4413 dated 1.08.2007 can be sustained or not?

Before dealing with the rival submissions, it would be appropriate to notice relevant statutory provisions, which deal with the purpose and intention of Act 1 of 1986.

Sub Section (1) of Section 3 of the Act 1 of 1986 empowers the Government to make orders for detaining certain persons with a view to prevent them from acting in any manner prejudicial to the maintenance of public order. Preventive detention is an anticipatory measure and does not relate to an offence, while criminal proceedings are to punish a person for an offence committed by him under the Indian Penal Code.

Sub-section (2) of Section 3 allows the detention of a person only if the appropriate detaining authority with whom the powers are delegated under sub-section (2) of Section 3 is satisfied with a view to prevent such person from carrying on any of the offensive activities enumerated therein, it is necessary to detain such person. The satisfaction of the detaining authority is not a subjective one based on his beliefs or prejudices. There must be a real likelihood of the person being able to indulge in such activities, the inference of such likelihood being drawn from objective data.

Sub-Section (2) of Section 3 deals with delegation of powers by the State Government and provides that if the State Government is satisfied having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be, to exercise the powers of the State Government to order detention of a person as provided by sub-section (1).

Sub-section (3) of Section 3 reads as under:

> When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless in the meantime, it has been approved by the State Government.

Section 2(b) defines “bootlegger”, which reads as follows:

> “2. (b) ‘bootlegger’ means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968, and the rules, notifications and orders made thereunder or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the abovementioned things by himself or through any other person, or who abets in any other manner the doing of any such thing.

Section 2(a) of the Act defines the meaning of the expression "acting in any manner prejudicial to the maintenance of public order" which reads as follows.

> (a) "acting in any manner prejudicial to the maintenance of public order" means when a bootlegger, dacoit, a goonda, an immoral traffic offender or a land grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order".

Explanation to Section 2(a) of the Act reads asunder.

> "For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health."

In all the cases registered against the alleged detenu, he was found to be transporting and in possession of illicitly distilled liquor and on an analysis of the samples of seized contraband, the Government Chemical Examiner gave reports opining that the arrack seized from the possession of the detenu is unfit for human consumption and injurious to public health.

In **Doddi Sharada v. Collector and District Magistrate Hyderabad**[4] this Court after considering the various decisions and provisions of Act 1 of 1986, on the subjective satisfaction of the Collector held as under.

> "In the light of all these judgments, it is clear that what is necessary for the District Magistrate for arriving at a subjective satisfaction on the basis of the material before him is that the activities of the person are prejudicial to maintenance of public order. In terms of explanation to Section 2 (a) public order would also mean a danger to public health and if the Public Analyst, on a seized sample, was of the opinion that it is not potable or was not fit for human consumption, that in our view, is relevant material for the purpose of arriving at subjective satisfaction. In our view, it is not necessary that the percentages of different constituents of the sample should be mentioned by the Public Analyst. Even if a Public Analyst gives the composition of all the ingredients of the sample without mentioning whether the sample was fit for human consumption or not, it may not be possible for the District Magistrate to know as to whether the sample was injurious to health or not. Basically, it is the opinion of the Public Analyst, which is paramount in determining whether the liquor that was being sold, stored or manufactured, would cause danger to public health." (para 29)

In **R. Kalavathi v. State of Tamilnadu**[5] the husband of the appellant was detained under Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982, which is *pari materia* to Act 1 of 1986. While considering the meaning of word "habitually" the Supreme Court held as under.

> The expression "habit" or "habitual" has not been defined under the Gujarat Prevention of Anti-Social Activities Act, 1985. The Word "habitually" does not refer to the frequency of the occasions but to the invariability of a practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. The word " habitually" means "usually" and

> "generally". Almost similar meaning is assigned to the word "habit" in Aiyar's Judicial Dictionary, 10th Edn., at p. 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. (See Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta (1995) 3 SCC 237) (para 12).
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> The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. (See Ayub v. S.N. Sinha (1990) 4 SCC 552) (para 13).

In **Rashidmiya's** case relied upon by the learned counsel for the petitioner, the Supreme Court while considering the definition of 'bootlegger' under the provisions of Gujarat Prevention of Anti-Social Activities Act (Act 16 of 1985), which is analogous to Act, 1986, held that the detaining authority must not only be satisfied that the person is a bootlegger within the meaning of Section 2(b) but also that the activities of the said bootlegger affect adversely or are likely to affect adversely the maintenance of public order. It was further held that where some offences were registered against the detenu therein on the ground that he was illegally dealing in liquor, the same would have no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order.

However, in a subsequent decision, the Supreme Court in **Harpreet Kaur v. State of Maharashtra**[6] while considering the identical provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 held that "Public Order" or "Law and Order" are two different and distinct concepts and there is abundance of authority of this Court drawing a clear distinction between the two, with a view to determining the validity or otherwise of the order of detention, it would be necessary to notice the difference between the two concepts. After referring to the various judgments rendered by it, the Supreme Court held as under.

> "The explanation to Section 2(a) (supra) brings into effect a legal fiction as to the adverse effect on 'public order'. It provides that if any of the activities of a person referred to in clauses (i)-(iii) of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or a wide-spread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall out of the activity of the "bootlegger" which determines whether public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act.

In view of the decision of the Supreme Court in **Harpreet Kaur v. State of Maharashtra,** which is subsequent in point of time, which elaborately considered what is the true meaning of 'public order, we are inclined to follow the same.

The contention of the learned counsel for the petitioner that since the detenu is not involved in manufacturing of the illicit liquor, his activities do not come within the ambit of 'bootlegger' as defined under section 2(b) of the Act, 1986 has no merit. Section 2(b) of the Act, 1986 clearly takes in its fold a person who is transporting any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the A.P. Excise Act, 1968, and the rules, notifications and orders made thereunder. The

allegations against the detenu are that he is in possession and transporting the illicit liquor in huge quantities, which is unfit for human consumption and prejudicial to the maintenance of public order. Therefore, the activities of the detenu clearly comes within the ambit of Section 2(b) of the Act, 1986. Further, in view of the decisions of this Court in *Dodda Sharada v. Collector and District Magistrate, Hyderabad* (4 supra) and the decisions of the Supreme in Court in *R. Kalavathi v. State of Tamilnadu* (5 supra) and *Harpreet Kaur v. State of Maharashtra* (6 supra), such a contention cannot be accepted.

The contention of the learned counsel for the petitioner that the detaining authority has not taken into consideration the fact that the detenu was enlarged on bail and, therefore, there was non-application of mind on the part of the authority has also no merit. The fact that the Court enlarged the detenu on bail has nothing to do with the power to be exercised by the authority under the provisions of the Act, 1986. The learned counsel for the petitioner has not brought to our notice any provision of the Act, 1986, which mandates the detaining authority that while passing an order of detention, it has to take into consideration the fact that the detenu was enlarged on bail by the Court. The power to be exercised by the Court in granting a regular bail in a criminal case is independent of the power to be exercised by the designated detaining authority under the provisions of Act, 1986. In the absence of any such provision under the Act empowering the detaining authority to take into consideration the factum of detenu being enlarged on bail by the Court while passing an order of detention, it cannot be said that the action of the detaining authority in passing the order of detention is vitiated on account of non-application of mind. On facts, the decision relied upon by the petitioner in **K. Ramamohana Reddy v. Chief Secretary to Government** has no application to the present case. In the said case, the detenu was involved in criminal cases registered under the Indian Penal Code for the offences punishable under Sections 324, 307 IPC etc. One of the grounds mentioned for passing the order of detention is that he was figured in certain criminal cases, that he was arrested and sent for remand, but came out on bail subsequently that after release on bail he had absconded and has been evading the police and NBW issued against him is pending. It was contended in the said case that the detaining authority has not considered the order granting bail to the detenu nor the copies of relevant documents have been supplied to the detenu before passing the order of detention. Therefore, the detenu in the said case was involved in cases registered for the offences punishable under the Indian Penal Code, whereas in the present case the detenu was involved in transporting illicit liquor in large quantities, in contravention of the provisions of the Excise Act. It is not the case of the petitioner herein that the detenu was not supplied with necessary documents so that he has lost the opportunity of defending his case effectively. Further, it cannot be said that consumption of spurious liquor by the public in which the detenu is dealing is not harmful or injurious to the public. The reports of public analyst clearly shows that the seized contraband is unfit for human consumption. In such circumstances, in our considered view, granting of bail to the detenu in some cases was not a relevant factor to be considered by the detaining authority while making an order of detention, in the absence of any provision under the Act to consider the factum of granting bail to the detenu by the Court before passing an order of detention. Therefore, the decision of this Court in **Ramamohan Reddy's** case has no application to the facts of the present case.

The decision in **C. Venkateswara Rao v. Collector and District Magistrate, Krishna District, Machilipatnam** has also no application to the present case. In the said case, small quantities of liquor were involved whereas in the present case the detenu is alleged to have been transporting huge

quantities of illicit liquor. Further, this Court in **Dodda Sharada v. Collector and District Magistrate, Hyderabad** (4 supra) while explaining the meaning of 'public order' held that it is the opinion of the public analyst – whether seized sample is potable or unfit for human consumption - that is relevant for the purpose of arriving at subjective satisfaction by the Collector and that it is not necessary that the per centages of different constituents of the sample should be mentioned by the public analyst. It was clearly held that it is the opinion of the public analyst that has paramount importance in determining, whether the liquor that was being sold, transported or manufactured would cause danger to public health or not. The chemical examiner report in the present case clearly says that the seized arrack contains sediment, which is unfit for human consumption and injurious to health.

In the light of the law laid down in the aforementioned judgments of the Apex court and this Court, if we consider the grounds of detention, an irresistible conclusion can be drawn that the detenu was habituated in commission of crimes and is accustomed to commit crimes of transporting and selling of illicitly distilled liquor, which contains injurious substances and unfit for human consumption. Once the detenu is indulging in bootlegging activities of purchase, transport, sale and distribution of illegally manufactured spurious liquor violating the provisions of the Excise Act, which is likely to cause widespread danger to public health and create a feeling of insecurity among the general public, and if the same is allowed, there is every possibility of danger to the life of public health who consumes illicit liquor, which is a prejudicial activity causing danger to public health and maintenance of public order, no interference is warranted by this Court. The detaining authority satisfied that the activities, which were carried on by the detenu, would cause prejudice and adversely affect the public health, particularly the downtrodden and the under privileged in the area and passed the detention order, which was approved by the Government. When the matter is placed before the Advisory Board, the Advisory Board after providing an opportunity to the detenu, opined that there is sufficient cause for the detention of the alleged detenu and the same had been accepted by the Government only to prevent the detenu from perpetuating transporting and distribution of illicitly distilled liquor. In view of the same, the detention order passed by the Collector and District Magistrate, as affirmed by the Government in G.O.Rt.No.4413 dated 1.8. 2007 does not suffer from any illegality warranting interference of this Court.

Accordingly, the Writ Petition is dismissed at the admission stage.

However, it is open to the detenu to make a representation to the Government to reconsider the order of detention and release him from detention since he was already under detention for more than eight months. If such a representation is made, the Government may consider the feasibility of releasing him from detention before the completion of the detention period and pass appropriate orders, as expeditiously as possible and the result thereof be intimated to the petitioner.

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A. GOPAL REDDY, J

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3rd December, 2007 **NOOTY RAMAMOHANA RAO, J**

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Note: Furnish CC forthwith.

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[1] AIR 1989 SC 1703.
[2] 2004 (6() ALD 816 (DB)
[3] 1997(2) ALD (Crl.) 762
[4] 2005 (2) ALT 244 :: 2005 Crl.L.J. 1916
[5] (2006) 6 SCC 14
[6] AIR 1992 SC 979 ;; (1992) 2 SCC 177